

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

LEON JACKSON,

Plaintiff,

v.

Case No. 2:05-cv-188
HON. R. ALLAN EDGAR

W. LEUTZOW, et. al.,

Defendants.

MEMORANDUM AND ORDER

Plaintiff Leon Jackson, a state prisoner in the custody of the Michigan Department of Corrections, brings this civil rights action under 42 U.S.C. § 1983. Defendants move for summary judgment pursuant to Fed. R. Civ. P. 56. [Doc. No. 35]. Plaintiff opposes the motion.

Magistrate Judge Timothy P. Greeley has submitted a report and recommendation under 28 U.S.C. § 636(b)(1)(B) and W.D. Mich. LCivR 72.1. [Doc. No. 45]. The Magistrate Judge recommends that the defendants' motion for summary judgment be granted and that the plaintiff's entire complaint be dismissed with prejudice as to all claims against all defendants.

Plaintiff objects to the report and recommendation. After reviewing the record *de novo*, the Court concludes that the plaintiff's objections [Doc. No. 46] are without merit and are **DENIED**. The Court **ACCEPTS and ADOPTS** the report and recommendation as the opinion of the Court pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b), and W.D. Mich. LCivR 72.3(b). Accordingly, the defendant's motion for summary judgment [Doc. No. 35] is **GRANTED** pursuant to Fed. R. Civ. P. 56. The plaintiff's entire complaint shall be **DISMISSED WITH PREJUDICE**

as to all of the plaintiff's claims against all defendants.

The Court further concludes that any appeal of this action would not be in good faith and would be frivolous. *McGore v. Wigglesworth*, 114 F. 3d 601, 611 (6th Cir. 1997). Pursuant to 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(4)(B), the Court shall certify that any appeal by the plaintiff from this decision and the judgment of this Court would not be taken in good faith. Any application by plaintiff for leave to proceed on appeal *in forma pauperis* shall be denied.

In the event that the plaintiff appeals this decision to the Court of Appeals for the Sixth Circuit, this District Court will assess and require plaintiff to pay the \$455 appellate filing fee pursuant to § 1915(b)(1), *McGore*, 114 F.3d at 610-11, unless plaintiff is barred from proceeding *in forma pauperis* by the "three strikes" rule of 28 U.S.C. 1915(g). If he is so barred by 28 U.S.C. 1915(g), then plaintiff will be required to pay the \$455 appellate filing fee in one lump sum.

A separate judgment will be entered.

SO ORDERED

Dated: December 18, 2006.

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE